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SENATE BILL 456

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO GAMING; DEFINING "NONPROFIT ORGANIZATION" TO
INCLUDE CERTAIN ORGANIZATIONS THAT WERE CHARTERED AFTER
JANUARY 1, 1997; AMENDING THE GAMING CONTROL ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-2E-3 NMSA 1978 (being Laws 1997,
Chapter 190, Section 5, as amended) is amended to read:

"60-2E-3. DEFINITIONS. -- As used in the Gaming Control
Act:

A. "affiliate" means a person who, directly or
indirectly through one or more intermediaries, controls, is
controlled by or is under common control with a specified
person;

B. "affiliated company" means a company that:

(1) controls, is controlled by or is under

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1 common control with a company licensee; and

2 (2) is involved in gaming activities or
3 involved in the ownership of property on which gaming is
4 conducted;

5 C. "applicant" means a person who has applied for a
6 license or for approval of an act or transaction for which
7 approval is required or allowed pursuant to the provisions of
8 the Gaming Control Act;

9 D. "application" means a request for the issuance
10 of a license or for approval of an act or transaction for which
11 approval is required or allowed pursuant to the provisions of
12 the Gaming Control Act, but "application" does not include a
13 supplemental form or information that may be required with the
14 application;

15 E. "associated equipment" means equipment or a
16 mechanical, electromechanical or electronic contrivance,
17 component or machine used in connection with gaming activity;

18 F. "board" means the gaming control board;

19 G. "certification" means a notice of approval by
20 the board of a person required to be certified by the board;

21 H. "certified technician" means a person certified
22 by a manufacturer licensee to repair and service gaming
23 devices, but who is prohibited from programming gaming devices;

24 I. "company" means a corporation, partnership,
25 limited partnership, trust, association, joint stock company,

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1 joint venture, limited liability company or other form of
2 business organization that is not a natural person; "company"
3 does not mean a nonprofit organization;

4 J. "distributor" means a person who supplies gaming
5 devices to a gaming operator but does not manufacture gaming
6 devices;

7 K. "equity security" means an interest in a company
8 that is evidenced by:

9 (1) voting stock or similar security;

10 (2) a security convertible into voting stock
11 or similar security, with or without consideration, or a
12 security carrying a warrant or right to subscribe to or
13 purchase voting stock or similar security;

14 (3) a warrant or right to subscribe to or
15 purchase voting stock or similar security; or

16 (4) a security having a direct or indirect
17 participation in the profits of the issuer;

18 L. "executive director" means the chief
19 administrative officer appointed by the board pursuant to
20 Section 60-2E-7 NMSA 1978;

21 M. "finding of suitability" means a certification
22 of approval issued by the board permitting a person to be
23 involved directly or indirectly with a licensee, relating only
24 to the specified involvement for which it is made;

25 N. "game" means an activity in which, upon payment

1 of consideration, a player receives a prize or other thing of
2 value, the award of which is determined by chance even though
3 accompanied by some skill; "game" does not include an activity
4 played in a private residence in which no person makes money
5 for operating the activity except through winnings as a player;

6 O. "gaming" means offering a game for play;

7 P. "gaming activity" means an endeavor associated
8 with the manufacture or distribution of gaming devices or the
9 conduct of gaming;

10 Q. "gaming device" means associated equipment or a
11 gaming machine and includes a system for processing information
12 that can alter the normal criteria of random selection that
13 affects the operation of a game or determines the outcome of a
14 game;

15 R. "gaming employee" means a person connected
16 directly with a gaming activity; "gaming employee" does not
17 include:

18 (1) bartenders, cocktail servers or other
19 persons engaged solely in preparing or serving food or
20 beverages;

21 (2) secretarial or janitorial personnel;

22 (3) stage, sound and light technicians; or

23 (4) other nongaming personnel;

24 S. "gaming establishment" means the premises on or
25 in which gaming is conducted;

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1 T. "gaming machine" means a mechanical,
2 electromechanical or electronic contrivance or machine that,
3 upon insertion of a coin, token or similar object, or upon
4 payment of any consideration, is available to play or operate a
5 game, whether the payoff is made automatically from the machine
6 or in any other manner;

7 U. "gaming operator" means a person who conducts
8 gaming;

9 V. "holding company" means a company that directly
10 or indirectly owns or has the power or right to control a
11 company that is an applicant or licensee, but a company that
12 does not have a beneficial ownership of more than ten percent
13 of the equity securities of a publicly traded corporation is
14 not a holding company;

15 W. "immediate family" means natural persons who are
16 related to a specified natural person by affinity or
17 consanguinity in the first through the third degree;

18 X. "independent administrator" means a person who
19 administers an annuity, who is not associated in any manner
20 with the gaming operator licensee for which the annuity was
21 purchased and is in no way associated with the person who will
22 be receiving the annuity;

23 Y. "institutional investor" means a state or
24 federal government pension plan or a person that meets the
25 requirements of a qualified institutional buyer as defined in

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1 Rule 144A of the federal Securities Act of 1933, and is:

2 (1) a bank as defined in Section 3(a)(6) of
3 the federal Securities Exchange Act of 1934;

4 (2) an insurance company as defined in Section
5 2(a)(17) of the federal Investment Company Act of 1940;

6 (3) an investment company registered under
7 Section 8 of the federal Investment Company Act of 1940;

8 (4) an investment adviser registered under
9 Section 203 of the federal Investment Advisers Act of 1940;

10 (5) collective trust funds as defined in
11 Section 3(c)(11) of the federal Investment Company Act of 1940;

12 (6) an employee benefit plan or pension fund
13 that is subject to the federal Employee Retirement Income
14 Security Act of 1974, excluding an employee benefit plan or
15 pension fund sponsored by a publicly traded corporation
16 registered with the board; or

17 (7) a group comprised entirely of persons
18 specified in Paragraphs (1) through (6) of this subsection;

19 Z. "intermediary company" means a company that:

20 (1) is a holding company with respect to a
21 company that is an applicant or licensee; and

22 (2) is a subsidiary with respect to any
23 holding company;

24 AA. "key executive" means an executive of a
25 licensee or other person having the power to exercise

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1 significant influence over decisions concerning any part of the
2 licensed operations of the licensee or whose compensation
3 exceeds an amount established by the board in a rule;

4 BB. "license" means an authorization required by
5 the board for engaging in gaming activities;

6 CC. "licensee" means a person to whom a valid
7 license has been issued;

8 DD. "manufacturer" means a person who manufactures,
9 fabricates, assembles, produces, programs or makes
10 modifications to any gaming device for use or play in New
11 Mexico or for sale, lease or distribution outside New Mexico
12 from any location within New Mexico;

13 EE. "net take" means the total of the following,
14 less the total of all cash paid out as losses to winning
15 patrons and those amounts paid to purchase annuities to fund
16 losses paid to winning patrons over several years by
17 independent administrators:

18 (1) cash received from patrons for playing a
19 game;

20 (2) cash received in payment for credit
21 extended by a licensee to a patron for playing a game; and

22 (3) compensation received for conducting a
23 game in which the licensee is not a party to a wager;

24 FF. "nonprofit organization" means:

25 (1) a bona fide chartered or incorporated

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1 branch, lodge, order or association [~~in existence in New Mexico~~
2 ~~prior to January 1, 1997~~] of a fraternal organization that is
3 described in Section 501(c)(8) or (10) of the federal Internal
4 Revenue Code of 1986, [~~and~~] that is exempt from federal income
5 taxation pursuant to Section 501(a) of that code and that is
6 located in New Mexico; or

7 (2) a bona fide chartered or incorporated
8 post, auxiliary unit or society of, or a trust or foundation
9 for the post or auxiliary unit, in existence in New Mexico
10 prior to January 1, 1997, of a veterans' organization that is
11 described in Section 501(c)(19) or (23) of the federal Internal
12 Revenue Code of 1986 and that is exempt from federal income
13 taxation pursuant to Section 501(a) of that code;

14 GG. "person" means a legal entity;

15 HH. "premises" means land, together with all
16 buildings, improvements and personal property located on the
17 land;

18 II. "progressive jackpot" means a prize that
19 increases over time or as gaming machines that are linked to a
20 progressive system are played and upon conditions established
21 by the board may be paid by an annuity;

22 JJ. "public post-secondary educational institution"
23 means an institution designated in Article 12, Section 11 of
24 the constitution of New Mexico and an institution designated in
25 Chapter 21, Articles 13, 14 and 16 [~~and 17~~] NMSA 1978;

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1 KK. "progressive system" means one or more gaming
2 machines linked to one or more common progressive jackpots;

3 LL. "publicly traded corporation" means a
4 corporation that:

5 (1) has one or more classes of securities
6 registered pursuant to the securities laws of the United States
7 or New Mexico;

8 (2) is an issuer subject to the securities
9 laws of the United States or New Mexico; or

10 (3) has one or more classes of securities
11 registered or is an issuer pursuant to applicable foreign laws
12 that, the board finds, provide protection for institutional
13 investors that is comparable to or greater than the stricter of
14 the securities laws of the United States or New Mexico;

15 MM "registration" means a board action that
16 authorizes a company to be a holding company with respect to a
17 company that holds or applies for a license or that relates to
18 other persons required to be registered pursuant to the Gaming
19 Control Act;

20 NN. "subsidiary" means a company, all or a part of
21 whose outstanding equity securities are owned, subject to a
22 power or right of control or held, with power to vote, by a
23 holding company or intermediary company; and

24 OO. "work permit" means a card, certificate or
25 permit issued by the board, whether denominated as a work

1 permit, registration card or otherwise, authorizing the
2 employment of the holder as a gaming employee. "

3 Section 2. EFFECTIVE DATE. --The effective date of the
4 provisions of this act is July 1, 2003.

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